

DEPARTMENT OF THE ARMY  
Honolulu Engineer District, Corps of Engineers  
CEPOH-EC-M Fort Shafter, Hawaii 96858-5440

POHR 1110-1-4

Regulation  
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16 October 2000

Engineering and Construction  
ARCHITECT-ENGINEER (A-E) RESPONSIBILITY MANAGEMENT PROGRAM (AERMP)

1. PURPOSE. This regulation implements PODR 1110-1-4 dated 31 March 1998 for the U.S. Army Corps of Engineers, Honolulu Engineer District (CEPOH). This regulation establishes organizational responsibilities and provides supplemental guidance.

2. APPLICABILITY. This regulation is applicable to all staff elements of the Honolulu Engineer District (POH).

3. REFERENCES.

- a. EP 715-1-7, Architect-Engineer Contracting
- b. Federal Acquisition Regulation (FAR) Part 36.608
- c. Federal Acquisition Regulation (FAR) Part 36.609-2
- d. PODR 1110-1-4, 31 Mar 98, Architect-Engineer (A-E) Responsibility Management Programs (AERMP)

4. POLICY. It is the policy of the Honolulu Engineer District to:

- a. Conduct the A-E Responsibility Management Program in a timely manner consistent with the guidelines and criteria established in references 3.a. through 3.d.
- b. Make reasonable efforts to resolve A-E responsibility issues with A-Es to the extent possible without litigation and in a fair, consistent, reasonable, and professional manner.

5. RESPONSIBILITIES.

- a. Commander.

(1) Implement the AERMP within POH in a manner consistent with cited references, establish supplemental guidance, and assign responsibilities to the appropriate organization in the District.

(2) Establish an A-E Responsibility Management Review Board (hence called AERMRB or Board) to review deficiencies in A-E performance and advise on appropriate AERMP actions. The A-E Responsibility Administrator (AERA) shall chair the Board. Other voting members shall include at least one representative each from Construction Branch, Programs and Project Management, and the Office of Counsel.

b. Engineering and Construction Division (E&C)

(1) A-E Responsibility Administrator (AERA). The Chief or Deputy Chief of Engineering & Construction Division shall be the AERA. The AERA shall chair the Board with the Chief of Construction Branch as a voting member. The AERA is responsible for the timeliness, cost-effectiveness, reasonableness and fairness of the AERMRB, and compliance with this regulation.

(2) A-E Responsibility Coordinator (AERC). The AERA shall appoint an AERC in the Engineering organization. The AERC is responsible for day-to-day management of the AERMRB and shall be the District point of contact with Pacific Ocean Division.

(3) Resident Office (Construction Field Office). The appropriate Construction field office will provide comment through the Resident Engineer for each design deficiency identified during the project construction. Construction Branch participates in the AERMRB meetings and policy/procedural decisions as a voting member.

(4) Technical Review. Design Branch will provide technical review of design deficiencies to advise the AERMRB in its deliberation of issues. Design Branch will also provide technical review of corrective designs when requested by the Resident Office or Project Manager (PM).

c. Programs and Project Management Division (PPM)

(1) The Chief or Deputy of Programs and Project Management Division shall be a voting member of the AERMRB.

(2) The Project Manager provides program and project information to the AERRB upon request to enable the Board to determine A-E liability.

(3) PM will distribute available funds to investigate A-E design deficiencies.

(4) The PM keeps the customer informed of A-E liability actions.

(5) The PM maintains detailed project cost records for each liability case upon request by the AERC.

d. Office of Counsel (OC)

(1) OC participates in the AERMRB meetings and policy/procedural decisions as a voting member.

(2) OC prepares "Demand Letters" to A-E firms for Contracting Officer signature approval as required in reference 3.a., para 7-7 I (1).

e. Contracting Division (CT) - Reviews AERMRB recommendations and decides whether to issue a demand letter or pursue recovery.

f. Resource Management Office (RMO) - Upon receipt of A-E settlement payments, provide appropriate disposition for damages received from A-E firms as described in reference 3.a. Prepares appointment memorandums for Board membership.

6. FUNDING.

a. General administration for the AERMP, such as meetings and reporting will be funded by Departmental Overhead (DOH). Appropriate DOH accounts will also be used to investigate and pursue A-E liability for completed projects where project funds are no longer available.

b. For projects under construction, the initial investigation and documentation of A-E design deficiencies by Construction Division will be charged to the S&A account. Following the initial investigation, project contingency funds or additional funds requested from the customer by the PM will be used to investigate and pursue A-E liability.

7. NOTIFICATION, INVESTIGATION, AND SETTLEMENT.

a. Initial Notification and Documentation. The A-E firm will be notified as soon as a design deficiency is discovered by the Resident Engineer (RE), Contracting Officer's Representative (COR) or the PM. Since the discovery of most A-E design deficiencies occurs during the construction phase, the RE will usually notify the A-E and coordinate with the Quality Assurance Section, the Design Branch, and PM. Documentation of all information should be performed. This includes a detailed description of the deficiency, record of contact with the A-E firm and its responses, names of those involved, actions taken, photographs, etc. The RE will evaluate the design deficiency IAW reference 3.a and make a determination if the A-E is not liable or is potentially liable and will document the contract file accordingly. The RE will forward all potential instances of A-E liability with the supporting documentation to the AERC for further investigation.

b. Investigation of Liability. The AERC will coordinate the investigation of potential instances of A-E liability that will involve technical review and opinion on the A-E's responsibility by qualified professionals from the Design Branch, Quality Assurance Section, or other qualified design professionals.

(1) If the AERC finds that the evidence will not support a finding that the A-E firm failed to exercise reasonable care, or finds that the Government did not sustain damage, the AERC will document the findings-of-fact, forward them to the AERMRB for concurrence, and insert them into the contract file.

(2) If the AERC finds, by a preponderance of the evidence, that the A-E work product failed to meet the standard of care ordinarily exercised by a reasonably prudent A-E, and that such failure caused harm to the Government, the AERC should prepare a finding that the A-E breached the contract. This finding must be fully documented with specific and verifiable facts. The documentation is considered adequate only if the facts set forth by the AERC are sufficient to compel an impartial and objective third party (board or court) to reach the same conclusion as the AERC (i.e., that the A-E breached the contract). The AERC will include the supporting data in the Case Document and meet with the AERMRB. Depending on the size of damages and strength of the evidence, the AERMRB will determine whether a letter of intent or a demand letter should be sent to the A-E.

(3) Action against the A-E firm for small errors or deficiencies on a particular project which individually result in damages less than \$5,000 may be deferred by the Board until the total damages warrant recovery. The AERC will forward a letter notifying the A-E of each deferred issue.

(4) The Government has 6 years from the date it knew, or should have known, of the existence of a design defect to initiate a claim, i.e., file an action in court. If the Government fails to initiate a claim within the prescribed period, it is forever barred. As a general rule, the 6-year period will start when the A-E submits its completed work, but could occur later.

c. Non-pursuit of liability due to lack of in-house funding. If the PM is unable to secure the necessary funding from the customer to pursue liability claims and the customer does not benefit from further liability action, the Contracting Officer may decide not to pursue A-E liability due to funding constraints. A recommendation by the AERMRB to the Contracting Officer outlining the amount of damages, likelihood of recovery, and benefit to the customer will be forwarded to the Contracting Officer for his final determination.

d. Settlement. A liability case is closed when final payment is received from the A-E firm or when the Government sends a letter to the firm notifying them that the Government is dropping its claim.

8. PERFORMANCE EVALUATION AND CONTRACT CLOSEOUT.

a. The AERC will prepare a revised A-E evaluation if a liability case is settled after the final performance evaluation has been previously completed.

b. A-E contracts should not be closed out until the firm's performance evaluation has been completed and all liability actions have been resolved.

9. REPORTING.

a. The AERC is responsible to prepare and submit quarterly and annual District reports to the Division AERC in accordance with reference 3.a.

FOR THE COMMANDER:

  
LORI SORAYAMA-CHANG  
Chief, Information Management Office

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